Easement instrument to grant easement ~~or profit à prendre or create land covenant~~

Sections 90A and 90F, Land Transfer Act 1952

2003/6180EF
Approved
Registrar-General of Land

EI 6809148.3 Easem
Cpy – 01/01, Pgs – 006, 30/03/06, 11
DocID: 211700809

Land registration district

NELSON

Grantor *Surname(s) must be underlined or in CAPITALS.*

Alice Mary Holmes and Patrick Thurston Holmes as to a ½ share, and
Alice Mary Holmes and Kennedy & Associates Trustee Company Limited as to a ½ share

Grantee *Surname(s) must be underlined or in CAPITALS.*

Alice Mary Holmes and Patrick Thurston Holmes as to a ½ share, and
Alice Mary Holmes and Kennedy & Associates Trustee Company Limited as to a ½ share

Grant* of easement or *profit à prendre* or creation or covenant

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** (and, if so stated, in gross) the easement(s) ~~or profit(s) à prendre set out in Schedule A, or creates the covenant~~(s) set out in Schedule A, with the rights and powers or provisions set out in the Annexure Schedule(s).

DATED this 20 day of March 2006

Attestation

Signed for and on behalf of Kennedy & Associates Trustee Company Limited by its Director P.T. Holmes A. M. Holmes A M Holmes **Signature [Common Seal] of Grantor**	**Signed in my presence by the Grantor** Signature of Witness Witness to complete in BLOCK letters (unless legibly printed) **Witness name:** VIANNI ROSE JENKINS **Occupation:** Law Clerk To Kennedy & Associates Solicitors **Address:** Motueka
Signed for and on behalf of Kennedy & Associates Trustee Company Limited by its Director P.T. Holmes A. M. Holmes A M Holmes **Signature [Common Seal] of Grantee**	**Signed in my presence by the Grantee** Signature of Witness Witness to complete in BLOCK letters (unless legibly printed) **Witness name:** VIANNI ROSE JENKINS **Occupation:** Law Clerk To Kennedy & Associates Solicitors **Address:** Motueka

Certified correct for the purposes of the Land Transfer Act 1952

[Solicitor for] the Grantee

* If the consent of any person is required for the grant, the specified consent form must be used.

Annexure Schedule 1

2003/6180EF
Approved
Registrar-General of Land

Easement instrument Dated 20.3.06 Page 2 of 6 pages

Schedule A *Continue in additional Annexure Schedule if required.*

Purpose (nature and extent) of easement, *profit*, or covenant	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT *or* in gross)
Right of Way, Right to Convey Water and Telecommunications	A, B, C, D, E	CT 252955	CT 252956

Easements ~~or *profits à prendre*~~ rights and powers (including terms, covenants, and conditions) *Delete phrases in [ ] and insert memorandum number as required.*

Continue in additional Annexure Schedule if required.

Unless otherwise provided below, the rights and powers provided in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Ninth Schedule of the Property Law Act 1952.

The implied rights and powers are [varied] [~~negatived~~] [~~added to~~] ~~or~~ [~~substituted~~] by:

[~~Memorandum number , registered under section 155A of the Land Transfer Act 1952~~].

[The provisions set out in Annexure Schedule 2].

~~**Covenant provisions**~~

~~*Delete phrases in [ ] and insert memorandum number as required.*~~

~~*Continue in additional Annexure Schedule if required*~~

The provisions applying to the specified ~~covenants~~ are those set out in:

[Memorandum number , registered under section 155A of the Land Transfer Act 1952].

[~~The provisions set out in Annexure Schedule 2~~].

All signing parties and either their witnesses or solicitors must sign or initial in this box.

Annexure Schedule

Insert below:-
"Mortgage", "Transfer", "Lease" etc

Easement dated 20.3.06 page 3 of 6 pages

ANNEXURE SCHEDULE 2

The rights and powers implied in specific classes of easement below are those prescribed by the Land Transfer Regulations 2002 and/or the Ninth Schedule of the Property Law Act 1952. Those implied rights and powers are added to by the provisions set out below.

A DEFINITIONS

1. In this transfer unless the context indicates otherwise:
   1.1 the "servient land" is the land owned by the Grantor described on page 1;
   1.2 the "dominant land" is the land owned by the Grantee and contained in certificate of title 252956 ;
   1.3 the "easement area " is that part of the servient land marked A, B, C, D, E on deposited plan 252956 ; and
   1.4 the "right of way" is the easement right described in section 2.

B RIGHT OF WAY

2. The Grantor grants to the Grantee the right for the Grantee, the Grantee's tenants, agents, workmen, licensees and invitees (in common with the Grantor, the Grantor's tenants and any other persons lawfully entitled so to do) at all times to pass and repass on foot or with vehicles and with or without every kind of domestic animal, machine, equipment and implement over and along the easement area for all purposes connected with the use and enjoyment of the dominant land but not for any other purpose.

C RIGHT TO CONVEY WATER

3. The Grantor grants to the Grantee the right for the Grantee and the Grantee's tenants, agents, workmen, licensees and invitees (in common with the Grantor, the Grantor's tenants and any other persons lawfully entitled to do so):
   3.1 to take, convey and lead water at all times in any quantity in a free and unimpeded flow along the line of pipes described in clauses 3.2 or 3.3 (as the case may be);
   3.2 to use any line of pipes already laid in and under the soil of the easement area for the purpose described in clause 3.1;
   3.3 where no line of pipes already exists, to lay and maintain a line of pipes in and under the soil of the easement area for the purpose described in clause 3.1, and
   3.4 to enter on to the servient land (at any times, on any notice and by any route which is reasonable in the circumstances) with any tools, equipment, machinery and vehicles which are necessary and to remain there for any reasonable time for the purpose of laying, inspecting, cleaning, repairing, maintaining and renewing the pipes and to dig up the soil of the servient land to the extent necessary and reasonable, but in doing so the Grantee must:
      3.4.1 cause as little disturbance as reasonably possible to the surface of the servient land;
      3.4.2 restore the surface of the servient land as nearly as possible to its original condition; and
      3.4.3 restore any other consequential damage.

D RIGHT TO CONVEY TELECOMMUNICATIONS AND COMPUTER MEDIA

4. The right to convey telecommunications and computer media as specified in Schedule A ("the Telephone Easement") shall be on the following terms and conditions. The owner of the Dominant Tenement shall have the right for all times hereafter for themselves, Telecom New Zealand Limited ('Telecom") and any other telephonic communications and comupter media provider, their engineers, surveyors, servants, agents, employees, workmen and contractors with or without vehicles laden or unladen and with materials, machinery and implements from time to time and at all times:

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

4.1. To lay and maintain in and under the soil of the telephone easement or as the case may be erect, construct and maintain on, over and under the telephone easement, any telephonic communications or computer media, line, lines or works;

4.2. To enter and remain upon the land for the purposes of laying, maintaining, inspecting, repairing, renewing, replacing or altering any telephonic communications and computer media, line, lines, or works on the telephone easement as the case may be and opening up the soil of the telephone easement and make any cuttings, fillings, grades, batters or trenches and to re-open the same and generally to do and perform such acts or things upon the telephone easement as may be necessary to enable the Owner of the Dominant Tenement to receive the full free use and enjoyment of the rights and privileges granted under this telephone easement;

4.3. To use the line, lines, or works for the purpose of telephonic communications and computer media without interruption or impediment (except during any periods of inspection, repair, renewal, replacement or alteration);

PROVIDED THAT on completion of any work by the Owner of the Dominant Tenement pursuant to this telephone easement the Owner of the Dominant Tenement shall restore the surface of the land as nearly as possible to its former condition and replace the soil at the surface and turf (if any);

AND for the above purposes the Owner of the Dominant Tenement their employees, contractors or agents, Telecom, and any other telephonic communications and computer media provider and all persons having business with them concerning the transmission or distribution of telephonic communications and computer media shall have the full, free and unrestricted right:

a. To enter and re-enter on the land on foot or by any reasonable mode of transport;

b. To take on to the land all necessary tools, materials, machinery and equipment;

c. To carry out on the telephone easement such works as are required for the exercise of the powers and authorities hereby granted;

AND the following agreements covenants, conditions and restrictions shall apply in respect of the telephone easement:

a. The owner of the Dominant Tenement will in exercise of the powers hereby granted take reasonable and proper care not to damage any property on the telephone easement.

b. The owner of the Servient Tenement shall not permit the growth of any trees, shrubs or other vegetation or the erection or establishment of any structure whatsoever including fences on the telephone easement which:

i. In the opinion of the Owner of the Dominant Tenement or Telecom may hamper the telephone easement; or

ii. Endanger or cause nuisance to the telephone easement or employees or persons working on the easement in the course of their duties; or

iii. Transgress any bylaw or any statutory regulation relating to the telephone easement, telephonic communications and computer media, line, lines or works.

c. The Owner of the Dominant Tenement shall be deemed to have and to be free to exercise in connection with the telephone easement all authority, power, rights and remedies vested in them by law with regard to the works and installations and the supply of power and the operations generally.

d. The Owner of the Dominant Tenement may exercise and enjoy all rights, immunities from liability, powers and remedies which they now or in the future may possess or be entitled to or have vested in them by virtue of any statute or at common law without being limited or restricted by anything in this grant of telephone easement.

e. The Owner of the Dominant Tenement may exercise all or any of the rights, privileges, liberties and licences contained or implied herein either together with or independently of any of such as may be vested in them at common law or by statute.

f. The costs of work and installations required by the Owner(s) of the Dominant Tenement(s) in respect of the Telephone Easement shall be borne by the Owner(s) using the easement in such shares as may be fair and reasonable having regard to the use and benefit of the easement devised by such Owner(s) **PROVIDED HOWEVER** that if the Telephonic Easement shall be damaged or fall into a state of disrepair because of the act or neglect of any particular Owner, then that Owner shall be solely liable for the costs of repairing such damage or disrepair.

E GENERAL COVENANTS

5. The grant of the easement rights will be forever appurtenant to each and every part of the dominant tenement.
6. No power is implied for the Grantor to terminate the eaement rights for breach of any provision in this transfer by the Grantee or for any other cause, it being the parties' intention that the right of way will continue forever unless surrendered.
7. The Grantor will not do anything which interferes with or restricts the rights of the Grantee or other authorised persons in relation to the right of way.
8. The right of way is in those rights set out in Schedule 4 of the Land Transfer Regulations 2002 and the Ninth Schedule to the Property Law Act 1952.

F DEFAULT

9. If either party fails ("defaulting party") to perform or join with the other party ("other party") in performing any obligation under this transfer, the following provisions will apply:
10. the other party may serve a written notice on the defaulting party ("default notice") specifying the default and requiring the defaulting party to perform or to join in performing the obligation and stating that, after the expiry of one month from service of the default notice, the other party may perform the obligation;

If this Annexure Schedule is used as an expansion of an instrument, all signing parties and either their witnesses or their solicitors must put their signatures or initials here.

11. if after the expiry of one month from service of the default notice, the defaulting party has not performed or joined in performing the obligation, the other party may:
    - 11.1 perform the obligation; and
    - 11.2 for that purpose enter on to the dominant land or the servient land;
    - 11.3 the defaulting party must pay to the other party the costs of:
    - 11.4 the default notice; and
    - 11.5 the other party in performing the obligation of the defaulting party;
      within one month of receiving written notice of the other party's costs; and
    - 11.6. the other party may recover any money payable under clause 7.3 from the defaulting party as a liquidated debt.

G. DISPUTES

12. If any dispute or difference arises in any way out of or in connection with the easements referred to herein the parties agree to discuss the matter fully in the spirit of goodwill and co-operation with a view to reaching a resolution, for the purposes of which either party may require the other to enter mediation in the manner adopted by LEADR or any equivalent facility for alternative dispute resolution available in New Zealand. If the parties cannot resolve any such dispute or difference, and such dispute cannot be resolved through mediation, either party may require the matter to be referred to the arbitration of a single arbitrator on the following terms:-

    12.1. The arbitrator is to be jointly agreed upon by the parties;

    12.2. If the parties fail to agree upon an arbitrator within 7 days of the issue being submitted to them any party may require the president of the Nelson District Law Society to nominate an arbitrator and that nomination will then bind the parties;

    12.3 The reference is reference to arbitration under the Arbitration Act 1996;

    12.4 The arbitration decision is final and binding and may include:

        i. An order for costs;

        ii. An order for enforcement;

        iii. Interest on moneys payable.

13. Any maintenance, repair or replacement of any Easement Facility (as that term is defined in Schedule 4 of the Land Transfer Regulations 2002) that is necessary because of any act or omission by the owner of the servient land (which includes any agents, employees, contractors, sub contractors or invitees of the owner) must be carried out promptly by that owner at the sole cost of that owner or in such proportion as relates to the act or omission.